

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants, LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On January 3, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight delivery, (ii) upon the parties listed on Exhibit B hereto via electronic notification, and (iii) upon the parties listed on Exhibit C hereto via postage pre-paid U.S. mail:

- 1) Order Under 11 U.S.C. §§ 327(e) and 1107(b) and Fed.R.Bankr.P. 2014 Authorizing Employment and Retention of Butzel & Long, P.C. as Commercial and Litigation Counsel to Debtors ("Butzel Long Retention Order") (Docket No. 1705) [a copy of which is attached hereto as Exhibit D]
- 2) Order Under 11 U.S.C. §§ 327(e) and 1107(b) and Fed.R.Bankr.P. 2014 Authorizing Employment and Retention of Howard & Howard Attorneys, P.C. As Intellectual Property Counsel to Debtors ("Howard & Howard Retention Order") (Docket No. 1706) [a copy of which is attached hereto as Exhibit E]
- 3) Order Under 11 U.S.C. §§ 327(e) and 1107(b) and Fed.R.Bankr.P. 2014 Authorizing Employment and Retention of Price, Heneveld, Cooper, Dewitt & Litton LLP as Intellectual Property Counsel to Debtors ("Price Heneveld Retention Order") (Docket No. 1707) [a copy of which is attached hereto as Exhibit F]
- 4) Order Under 11 U.S.C. §§ 327(e) and 1107(b) and Fed.R.Bankr.P. 2014 Authorizing Employment and Retention of Banner & Witcoff, LTD. as Intellectual Property Counsel to Debtors ("Banner Retention Order") (Docket No. 1708) [a copy of which is attached hereto as Exhibit G]
- 5) Order Under 11 U.S.C. §§ 327(e) and 1107(b) and Fed.R.Bankr.P. 2014 Authorizing Employment and Retention of Cantor Colburn LLP as Patent Counsel to Debtors ("Cantor Colburn LLP Retention Order") (Docket No. 1709) [a copy of which is attached hereto as Exhibit H]

- 6) Notice of Revised Hearing Date for Debtors' (I) Motion (A) to Quash Trial Subpoenas Issued to Members of Debtors' Audit Committee and for Protective Order and (B) for a Protective Order to Limit the Scope of the Deposition of Robert Dellinger to Only Those Matters Pertaining Directly to the Debtors' Application for Order Authorizing Employment and Retention of Deloitte & Touche LLP and (II) Objection to Lead Plaintiffs' Motion to Compel Deposition Testimony and the Production of Documents in Connection with the Debtors' Application for Order Under 11 U.S.C §§ 327(a), 328(a), and 1107(b) Authorizing Employment and Retention of Deloitte & Touche LLP as Independent Auditors and Accountants to Debtors, Effective Nunc Pro Tunc to October 8, 2005 and Objections Filed Thereto (Docket No. 1713) [a copy of which is attached hereto as Exhibit I]
- 7) Debtors' Response to Lead Plaintiffs' Objection to Debtors' Application for Order Under 11 U.S.C. §§ 327(a), 328(a), and 1107(b) Authorizing Employment and Retention of Deloitte & Touche LLP as Independent Auditors and Accountants to Debtors, Effective Nunc Pro Tunc to October 8, 2005 (Docket No. 1719) [a copy of which is attached hereto as Exhibit J]

On January 3, 2006, I caused to be served the document listed below (i) upon the parties listed on Exhibit K hereto via overnight delivery:

- 1) Notice of Revised Hearing Date for Debtors' (I) Motion (A) to Quash Trial Subpoenas Issued to Members of Debtors' Audit Committee and for Protective Order and (B) for a Protective Order to Limit the Scope of the Deposition of Robert Dellinger to Only Those Matters Pertaining Directly to the Debtors' Application for Order Authorizing Employment and Retention of Deloitte & Touche LLP and (II) Objection to Lead Plaintiffs' Motion to Compel Deposition Testimony and the Production of Documents in Connection with the Debtors' Application for Order Under 11 U.S.C §§ 327(a), 328(a), and 1107(b) Authorizing Employment and Retention of Deloitte & Touche LLP as Independent Auditors and Accountants to Debtors, Effective Nunc Pro Tunc to October 8, 2005 and Objections Filed Thereto (Docket No. 1713) [a copy of which is attached hereto as Exhibit I]

Dated: January 5, 2006

/s/ Evan Gershbein

Evan Gershbein

Sworn to and subscribed before
me on January 5, 2006

/s/ Sarah Elizabeth Frankel

Notary Public

My Commission Expires: 12/23/08

EXHIBIT A

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
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Capital Research and Management Company	Michelle Robson	11100 Santa Monica Blvd	15th Floor	Los Angeles	CA	90025	310-996-6140	310-996-6091	mlfr@capgroup.com	Creditor Committee Member
Cohen Weiss & Simon	Bruce Simon	330 W. 42nd Street		New York	NY	10036	212-356-0231	212-695-5436	b.simon@cwsny.com	
Curtis, Mallet-Prevost, Colt & Mosle LLP	Steven J. Reisman	101 Park Avenue		New York	NY	10178-0061	2126966000	2126971559	sreisman@cm-p.com	Counsel for Flextronics International USA, Inc.
Davis Polk & Wardwell	Donald Bernstein	450 Lexington Avenue		New York	NY	10017	212-450-4092	212-450-3092	donald.bernstein@dpw.com	Postpetition Administrative Agent
Delphi Corporation	Sean Corcoran, Karen Craft	5725 Delphi Drive		Troy	MI	48098	248-813-2000	248-813-2670	sean.p.corcoran@delphi.com karen.j.craft@delphi.com	Debtors
Electronic Data Systems Corp.	Michael Nefkens	5505 Corporate Drive MSIA		Troy	MI	48098	248-696-1729	248-696-1739	mike.nefkens@eds.com	Creditor Committee Member
Flextronics International	Carrie L. Schiff	6328 Monarch Park Place		Niwot	CO	80503	303-652-4853	303-652-4716	cshiff@flextronics.com	Counsel for Flextronics International
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Freescall Semiconductor, Inc.	Richard Lee Chambers, III	6501 William Cannon Drive West	MD: OE16	Austin	TX	78735	512-895-6357	512-895-3090	trey.chambers@freescall.com	Creditor Committee Member
FTI Consulting, Inc.	Randall S. Eisenberg	3 Times Square	11th Floor	New York	NY	10036	212-247-1010	212-841-9350	randall.eisenberg@fticonsulting.com	Financial Advisors to Debtors
General Electric Company	Valerie Venable	9930 Kinsey Avenue		Huntersville	NC	28078	704-992-5075	866-585-2386		Creditor Committee Member
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Internal Revenue Service	Attn: Insolvency Department, Mario Valerio	290 Broadway	5th Floor	New York	NY	10007	212-298-2015	212-298-2016		IRS
Internal Revenue Service	Attn: Insolvency Department	477 Michigan Ave	Mail Stop 15	Detroit	MI	48226	313-628-3648	313-628-3602		Michigan IRS
IUE-CWA	Henry Reichard	2360 W. Dorothy Lane	Suite 201	Dayton	OH	45439	937-294-7813	937-294-9164	hreichard@iuecwa@aol.com	Creditor Committee Member
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Law Debenture Trust of New York	Daniel R. Fisher	767 Third Ave.	31st Floor	New York	NY	10017	212-750-6474	212-750-1361	daniel.fisher@lawdeb.com	Indenture Trustee
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Togut, Segal & Segal LLP	Albert Togut	One Penn Plaza	Suite 3335	New York	NY	10119	212-594-5000	212-967-4258	altogut@teamtogut.com	Conflicts Counsel to the Debtors
United States Trustee	Alicia M. Leonard	33 Whitehall Street	21st Floor	New York	NY	10004-2112	212-510-0500	212-668-2255	does not take service via fax	United States Trustee
United States Trustee	Deirdre A. Martini	33 Whitehall Street	Suite 2100	New York	NY	10004	212-510-0500	212-668-2256	deirdre.martini@usdoj.gov	United States Trustee
Warner Stevens, L.L.P.	Michael D. Warner	1700 City Center Tower II	301 Commerce Street	Fort Worth	TX	76102	817-810-5250	817-810-5255		Proposed Conflicts Counsel for the Official Committee of Unsecured Creditors
Weil, Gotshal & Manges LLP	Jeffrey L. Tanenbaum, Esq.	767 Fifth Avenue		New York	NY	10153	212-310-8000	212-310-8007	jeffrey.tanenbaum@weil.com	Counsel to General Motors Corporation
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Weil, Gotshal & Manges LLP	Michael P. Kessler, Esq.	767 Fifth Avenue		New York	NY	10153	212-310-8000	212-310-8007	michael.kessler@weil.com	Counsel to General Motors Corporation
Wilmington Trust Company	Steven M. Cimalore	Rodney Square North	1100 North Market Street	Wilmington	DE	19890	302-636-6058	302-636-4143	scimalore@wilmingtontrust.com	Creditor Committee Member/Indenture Trustee

EXHIBIT B

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Capital Research and Management Company	Michelle Robson	11100 Santa Monica Blvd	15th Floor	Los Angeles	CA	90025	310-996-6140	310-996-6091	mfr@capgroup.com	Creditor Committee Member
Curtis, Mallet-Prevost, Colt & Mosle LLP	Steven J. Reisman	101 Park Avenue		New York	NY	10178-0061	2126966000	2126971559	sreisman@cm-p.com	Counsel for Flextronics International USA, Inc.
Davis Polk & Wardwell	Donald Bernstein	450 Lexington Avenue		New York	NY	10017	212-450-4092	212-450-3092	donald.bernstein@dpw.com	Postpetition Administrative Agent
Delphi Corporation	Sean Corcoran, Karen Craft	5725 Delphi Drive		Troy	MI	48098	248-813-2000	248-813-2670	sean.p.corcoran@delphi.com	Debtors
Electronic Data Systems Corp.	Michael Nefkens	5505 Corporate Drive MSIA		Troy	MI	48098	248-696-1729	248-696-1739	mike.nefkens@eds.com	Creditor Committee Member
Flextronics International	Terry Zale	6328 Monarch Park Place		Niwot	CO	80503	303-652-4853	303-652-4716	terryzale@flextronics.com	Counsel for Flextronics International
Freescale Semiconductor, Inc.	Richard Lee Chambers, III	6501 William Cannon Drive West	MD: OE16	Austin	TX	78735	512-895-6357	512-895-3090	rev_chambers@freescale.com	Creditor Committee Member
FTI Consulting, Inc.	Randall S. Eisenberg	3 Times Square	11th Floor	New York	NY	10036	212-2471010	212-841-9350	randall.eisenberg@fticonsulting.com	Financial Advisors to Debtors
Groom Law Group	Lonie A. Hassel	1701 Pennsylvania Avenue, NW		Washington	DC	20006	202-857-0620	202-659-4503	lhassel@groom.com	Counsel for Employee Benefits
Hodgson Russ LLP	Stephen H. Gross	152 West 57th Street	35th Floor	New York	NY	10019	212-751-4300	212-751-0928	sgross@hodgsonruss.com	Counsel for Hexcel Corporation
Honigman Miller Schwartz and Cohn LLP	Frank L. Gorman, Esq.	2290 First National Building	660 Woodward Avenue	Detroit	MI	48226-3583	313-465-7000	313-465-8000	fgorman@honigman.com	Counsel to General Motors Corporation
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Thelen Reid & Priest LLP	Daniel A. Lowenthal	875 Third Avenue		New York	NY	10022		212-603-2000	212-603-2001	dlowenthal@thelenreid.com	Counsel for Oki Semiconductor Company
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Thurman & Phillips, P.C.	Ed Phillips, Jr.	8000 IH 10 West	Suite 1000	San Antonio	TX	78230		210-341-2020	210-344-6460	ephillips@thurman-phillips.com	Precision Mold & Tool and d/b/a
Todd & Levi, LLP	Jill Levi, Esq.	444 Madison Avenue	Suite 1202	New York	NY	10022		212-308-7400		jlevi@todtlevi.com	Counsel to Bank of Lincolnwood
Togut, Segal & Segal LLP	Albert Togut, Esq.	One Penn Plaza	Suite 3335	New York	NY	10119		212-594-5000	212-967-4258	bmcDonough@teamtogut.com	Conflicts counsel to Debtors
Tyler, Cooper & Alcorn, LLP	W. Joe Wilson	City Place	35th Floor	Hartford	CT	06103-3488		860-725-6200	860-278-3802	jwilson@tylercooper.com	Counsel for Barnes Group, Inc.
Underberg & Kessler, LLP	Helen Zamboni	300 Bausch & Lomb Place		Rochester	NY	14604		585-258-2800	585-258-2821	hazamboni@underbergkessler.com	Counsel for McAlpin Industries, Inc.
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Varnum, Riddering, Schmidt & Howlett LLP	Michael S. McElwee	Bridgewater Place	P.O. Box 353	Grand Rapids	MI	49501-0352		616-336-6827	616-336-7000	msmcelwee@varnumlaw.com	Counsel for Furukawa Electric North America APD
Vorys, Sater, Seymour and Pease LLP	Robert J. Sidman, Esq.	52 East Gay Street	P.O. Box 1008	Columbus	OH	43216-1008		614-464-6422	614-719-8676	rsidman@vssp.com	Counsel for America Online, Inc. and its Subsidiaries and Affiliates
Vorys, Sater, Seymour and Pease LLP	Tiffany Strelow Cobb	52 East Gay Street		Columbus	OH	43215		614-464-8322	614-719-4663	tsobb@vssp.com	Counsel for Capital Research and Management Company
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Warner Norcross & Judd LLP	Michael G. Cruse	2000 Town Center	Suite 2700	Southfield	MI	48075		248-784-5131	248-603-9631	mcruse@wnj.com	Counsel to Compuware Corporation
Warner Stevens, L.L.P.	Michael D. Warner	301 Commerce Street	Suite 1700	Fort Worth	TX	76102		817-810-5250	817-810-5255	bankruptcy@warnerstevens.com	Counsel for Electronic Data Systems Corp. and EDS Information Services, L.L.C.
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White & Case LLP	Margarita Mesones-Mori	Wachovia Financial Center	200 South Biscayne Blvd., Suite 4900	Miami	FL	33131		305-371-2700	305-358-5744	mmesonesmori@whitecase.com	Counsel for Appaloosa Management, LP
Whyte, Hirschboeck Dudek S.C.	Bruce G. Arnold	555 East Wells Street	Suite 1900	Milwaukee	WI	53202-4894		414-273-2100	414-223-5000	barnold@whdlaw.com	Counsel for Schunk Graphite Technology
Winstead Sechrest & Minick P.C.	Berry D. Spears	401 Congress Avenue	Suite 2100	Austin	TX	78701		512-370-2800	512-370-2850	bspears@winstead.com	Counsel for National Instruments Corporation
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Zeichner Ellman & Krause LLP	Stuart Krause	575 Lexington Avenue		New York	NY	10022		212-223-0400	212-753-0396	skrause@zeklaw.com	Counsel for Toyota Tsusho America, Inc.

EXHIBIT C

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
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Ambrake Corporation	Ronald L. Jones	300 Ring Road		Elizabethtown	KY	42701	270-765-0208	270-234-2395	Does not wish to receive electronic mailings	Representative for Ambrake Corporation
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COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
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Mayer, Brown, Rowe & Maw LLP	Raniero D'Aversa, Jr.	1675 Broadway		New York	NY	10019	212-262-1910	212-506-2500		Counsel for Bank of America, N.A.
Mayer, Brown, Rowe & Maw LLP	Jeffrey G. Tougas	1675 Broadway		New York	NY	10019	212-262-1910	212-506-2500		Counsel for Bank of America, N.A.
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Michigan Department of Labor and Economic Growth, Worker's Compensation Agency	Michael Cox	PO Box 30736		Lansing	MI	48909-7717	517-373-1820	517-373-2129		Attorney General for Worker's Compensation Agency
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COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
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EXHIBIT D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re : Chapter 11
DELPHI CORPORATION, et al., : Case No. 05-44481 (RDD)
Debtors. : (Jointly Administered)
-----x

ORDER UNDER 11 U.S.C. §§ 327(e) AND 1107(b) AND FED. R. BANKR. P. 2014
AUTHORIZING EMPLOYMENT AND RETENTION OF BUTZEL & LONG, P.C.
AS COMMERCIAL AND LITIGATION COUNSEL TO DEBTORS

("BUTZEL LONG RETENTION ORDER")

Upon the application, dated December 6, 2005 (the "Application"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order"), pursuant to 11 U.S.C. §§ 327(e) and 1107(a) and Fed. R. Bankr. P. 2014, authorizing the employment and retention of Butzel Long, PC ("Butzel") as commercial and litigation counsel to the Debtors; and upon the Affidavit of James Derian, sworn to December 6, 2005, in support of the Application (the "Derian Affidavit"); and this Court being satisfied with the representations made in the Application and the Derian Affidavit that Butzel does not represent or hold any interest adverse to any of the Debtors' estates or the Debtors with respect to the matters on which Butzel is to be employed, and that Butzel's employment is necessary and would be in the best interests of each of the Debtors' estates; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is GRANTED.

2. The Debtors' employment of Butzel as commercial and litigation counsel, pursuant to the Application, is approved under sections 327(e) and 1107(b) of the Bankruptcy Code, and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), with approval of such employment being effective as of the Petition Date, October 8, 2005.

3. Butzel shall be compensated in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code and all applicable Bankruptcy Rules, Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), guidelines established by the Office of the United States Trustee, and further orders of this Court. Without limiting the foregoing, Butzel shall make reasonable efforts to ensure that the Debtors' estates are not charged for any duplication of work with the other professionals retained in these cases.

4. Any party-in-interest shall have the right to raise the issue of the application of Butzel's postpetition fees and expenses incurred at any time.

5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Final Order.

6. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Application.

Dated: New York, New York
January 3, 2006

/s/ Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

ORDER UNDER 11 U.S.C. §§ 327(e) AND 1107(b) AND FED. R. BANKR. P. 2014
AUTHORIZING EMPLOYMENT AND RETENTION OF HOWARD & HOWARD
ATTORNEYS, P.C. AS INTELLECTUAL PROPERTY COUNSEL TO DEBTORS

("HOWARD & HOWARD RETENTION ORDER")

Upon the application, dated December 6, 2005 (the "Application"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order"), pursuant to 11 U.S.C. §§ 327(e) and 1107(a) and Fed. R. Bankr. P. 2014, authorizing the employment and retention of Howard & Howard Attorneys, P.C. ("H&H") as special intellectual property counsel to the Debtors; and upon the Affidavit of William H. Honaker, sworn to November 17, 2005, in support of the Application (the "Honaker Affidavit"); and this Court being satisfied with the representations made in the Application and the Honaker Affidavit that H&H does not represent or hold any interest adverse to any of the Debtors' estates or the Debtors with respect to the matters on which H&H is to be employed, and that H&H's employment is necessary and would be in the best interests of each of the Debtors' estates; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is GRANTED.

2. The Debtors' employment of H&H as intellectual property counsel, pursuant to the Application, is approved under sections 327(e) and 1107(a) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), with approval of such employment being effective the Petition Date, October 8, 2005.

3. H&H shall be compensated in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code and all applicable Bankruptcy Rules, Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), guidelines established by the Office of the United States Trustee, and further orders of this Court. Without limiting the foregoing, H&H shall make reasonable efforts to ensure that the Debtors' estates are not charged for any duplication of work with the other professionals retained in these cases.

4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Final Order.

5. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Application.

Dated: New York, New York
January 3, 2006

/s/ Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
	:
In re	: Chapter 11
	:
DELPHI CORPORATION, <u>et al.</u> ,	: Case No. 05-44481 (RDD)
	:
Debtors.	: (Jointly Administered)
	:
-----X	

ORDER UNDER 11 U.S.C. §§ 327(e) AND 1107(b) AND FED. R. BANKR.
P. 2014 AUTHORIZING EMPLOYMENT AND RETENTION OF
PRICE, HENEVELD, COOPER, DEWITT & LITTON LLP
AS INTELLECTUAL PROPERTY COUNSEL TO DEBTORS

("PRICE HENEVELD RETENTION ORDER")

Upon the application, dated December 6, 2005 (the "Application"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order"), pursuant to 11 U.S.C. §§ 327(e) and 1107(b) and Fed. R. Bankr. P. 2014, authorizing the employment and retention of Price, Heneveld, Cooper, DeWitt & Litton LLP ("Price Heneveld") as legal ordinary course professional counsel to the Debtors; and upon the Affidavit of Kevin T. Grzelak, sworn to December 6, 2005, in support of the Application (the "Grzelak Affidavit"); and this Court being satisfied with the representations made in the Application and the Grzelak Affidavit that Price Heneveld does not represent or hold any interest adverse to any of the Debtors' estates or the Debtors with respect to the matters on which Price Heneveld is to be employed, and that Price Heneveld's employment is necessary and would be in the best interests of each of the Debtors' estates; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is GRANTED.
2. The Debtors' employment of Price Heneveld as an intellectual property counsel, pursuant to the Application, is approved under sections 327(e) and 1107(b) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), with approval of such employment being effective as of the Petition Date, October 8, 2005.
3. Price Heneveld shall be compensated in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code and all applicable Bankruptcy Rules, Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), guidelines established by the Office of the United States Trustee, and further orders of this Court. Without limiting the foregoing, Price Heneveld shall make reasonable efforts to ensure that the Debtors' estates are not charged for any duplication of work with the other professionals retained in these cases.
4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Final Order.
5. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Application.

Dated: New York, New York
January 3, 2006

/s/ Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT G

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	
	:
In re	: Chapter 11
	:
DELPHI CORPORATION, <u>et al.</u> ,	: Case No. 05-44481 (RDD)
	:
Debtors.	: (Jointly Administered)
	:
-----x	

ORDER UNDER 11 U.S.C. §§ 327(e) AND 1107(b) AND FED. R. BANKR. P. 2014
AUTHORIZING EMPLOYMENT AND RETENTION OF BANNER & WITCOFF, LTD.
AS INTELLECTUAL PROPERTY COUNSEL TO DEBTORS

("BANNER RETENTION ORDER")

Upon the application, dated December 6, 2005 (the "Application"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order"), pursuant to 11 U.S.C. §§ 327(e) and 1107(b) and Fed. R. Bankr. P. 2014, authorizing the employment and retention of Banner & Witcoff, Ltd. ("Banner") as an intellectual property counsel to the Debtors; and upon the Affidavit of Charles W. Shifley, sworn to December 6, 2005, in support of the Application (the "Shifley Affidavit"); and this Court being satisfied with the representations made in the Application and the Shifley Affidavit that Banner does not represent or hold any interest adverse to any of the Debtors' estates or the Debtors with respect to the matters on which Banner is to be employed, and that Banner's employment is necessary and would be in the best interests of each of the Debtors' estates; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is GRANTED.

2. The Debtors' employment of Banner as intellectual property counsel, pursuant to the Application, is approved under sections 327(e) and 1107(b) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), with approval of such employment being effective as of the Petition Date, October 8, 2005.

3. Banner shall be compensated in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code and all applicable Bankruptcy Rules, Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), guidelines established by the Office of the United States Trustee, and further orders of this Court. Without limiting the foregoing, Banner shall make reasonable efforts to ensure that the Debtors' estates are not charged for any duplication of work with the other professionals retained in these cases.

4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Final Order.

5. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Application.

Dated: New York, New York
January 3, 2006

/s/ Robert D. Drain
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	
	:
In re	: Chapter 11
	:
DELPHI CORPORATION, <u>et al.</u> ,	: Case No. 05-44481 (RDD)
	:
Debtors.	: (Jointly Administered)
	:
-----x	

ORDER UNDER 11 U.S.C. §§ 327(e) AND 1107(b) AND FED. R. BANKR. P. 2014
AUTHORIZING EMPLOYMENT AND RETENTION OF CANTOR COLBURN LLP
AS PATENT COUNSEL TO DEBTORS

("CANTOR COLBURN LLP RETENTION ORDER")

Upon the application, dated December 6, 2005 (the "Application"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order") under 11 U.S.C. §§ 327(e) and 1107(b) and Fed. R. Bankr. P. 2014 authorizing the employment and retention of Cantor Colburn LLP ("CCLLP") as patent counsel to the Debtors; and upon the Affidavit of Philmore H. Colburn, Esq., sworn to December 6, 2005, in support of the Application (the "Colburn Affidavit"); and this Court being satisfied with the representations made in the Application and the Colburn Affidavit that CCLLP does not represent or hold any interest adverse to any of the Debtors' estates or the Debtors with respect to the matters on which CCLLP is to be employed, and that CCLLP's employment is necessary and would be in the best interests of each of the Debtors' estates; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is GRANTED.

2. The Debtors' employment of CCLLP as their patent counsel, pursuant to the Application, is approved under sections 327(e) and 1107(b) of the Bankruptcy Code, and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), with approval of such employment being effective as of the date of the Application.

3. CCLLP shall be compensated in accordance with the standards and procedures set forth in sections 330 and 331 of the Bankruptcy Code and all applicable Bankruptcy Rules, Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), guidelines established by the Office of the United States Trustee, and further orders of this Court. Without limiting the foregoing, CCLLP shall make reasonable efforts to ensure that the Debtors' estates are not charged for any duplication of work with the other professionals retained in these cases.

4. Any party-in-interest shall have the right to raise the issue of the application of CCLLP's postpetition fees and expenses incurred at any time.

5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

6. The requirement under Local Rule 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Application.

Dated: New York, New York
January 3, 2006

/s/ Robert D. Drain

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT I

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	

NOTICE OF **REVISED HEARING DATE** FOR DEBTORS' (I) MOTION (A) TO
QUASH TRIAL SUBPOENAS ISSUED TO MEMBERS OF DEBTORS' AUDIT
COMMITTEE AND FOR PROTECTIVE ORDER AND (B) FOR A PROTECTIVE
ORDER TO LIMIT THE SCOPE OF THE DEPOSITION OF ROBERT DELLINGER TO
ONLY THOSE MATTERS PERTAINING DIRECTLY TO THE DEBTORS'
APPLICATION FOR ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF
DELOITTE & TOUCHE LLP AND (II) OBJECTION TO LEAD PLAINTIFFS' MOTION
TO COMPEL DEPOSITION TESTIMONY AND THE PRODUCTION OF DOCUMENTS
IN CONNECTION WITH THE DEBTORS' APPLICATION FOR ORDER UNDER 11
U.S.C. §§ 327(a), 328(a), AND 1107(b) AUTHORIZING EMPLOYMENT AND
RETENTION OF DELOITTE & TOUCHE LLP AS INDEPENDENT AUDITORS AND
ACCOUNTANTS TO DEBTORS, EFFECTIVE NUNC PRO TUNC TO
OCTOBER 8, 2005 AND OBJECTIONS FILED THERETO

PLEASE TAKE NOTICE THAT the hearing scheduled for January 4, 2006 at
10 a.m. (Prevailing Eastern Time) to hear the Debtors' (I) Motion to (A) Quash Trial Subpoenas

Issued to Members of Debtors' Audit Committee and For Protective Order and (B) For a Protective Order To Limit the Scope of the Deposition of Robert Dellinger to Only Those Matters Pertaining Directly to the Debtors' Application for Order Authorizing Employment and Retention of Deloitte & Touche LLP and (II) Objection to Lead Plaintiffs' Motion to Compel Deposition Testimony and the Production of Documents in Connection with the Debtors' Application for Order Under 11 U.S.C. §§ 327(a), 328(a), and 1107(b) Authorizing Employment and Retention of Deloitte & Touche LLP as Independent Auditors and Accountants to Debtors, Effective Nunc Pro Tunc to October 8, 2005 and Objections Filed Thereto has been changed to **January 5, 2006 at 10:00 a.m.** (Prevailing Eastern Time) before the Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York, Room 610, One Bowling Green, New York, NY 10004.

Dated: New York, New York
January 3, 2006

/s/ Andrew V. Tenzer
Douglas P. Bartner (DB-2301)
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

DEBTORS' RESPONSE TO LEAD PLAINTIFFS' OBJECTION TO DEBTORS'
APPLICATION FOR ORDER UNDER 11 U.S.C. §327(a), 328(a), AND 1107(b)
AUTHORIZING EMPLOYMENT AND RETENTION OF DELOITTE & TOUCHE LLP AS
INDEPENDENT AUDITORS AND ACCOUNTANTS TO DEBTORS,
EFFECTIVE *NUNC PRO TUNC* TO OCTOBER 8, 2005

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates,
debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"),
hereby submit this response (the "Response") to the Lead Plaintiffs' Objection (the "Objection")
to the Debtors' Application For Order Under 11 U.S.C. §327(a), 328(a), And 1107(b) Authorizing

Employment And Retention Of Deloitte & Touche LLP As Independent Auditors And Accountants To Debtors, Effective *Nunc Pro Tunc* To October 8, 2005 (the "Application"). In support of this Response, the Debtors respectfully represent as follows:

Preliminary Statement

1. The first sentence of the Objection is also the most enlightening. In it, the objectors identify themselves not as creditors or interest holders of the Debtors' estates but as "the Court-appointed Lead Plaintiffs in the consolidated securities class action entitled *In re Delphi Corp. Securities Litigation*, Master File No. 1:05-CV-2637 (NRB) (SDNY)" (the "Securities Litigation"). Objection, p. 1. This statement confirms what all of the Lead Plaintiffs' recent activity in these chapter 11 cases demonstrates: that the Objection is not aimed at protecting the estates or their creditors but is part of a multi-pronged effort by the Lead Plaintiffs to obtain discovery and testimony in these chapter 11 cases to assist them in the Securities Litigation. Discovery in connection with that litigation, however, is twice stayed, first by section 362 of the Bankruptcy Code, and again by express provisions of the Private Securities Litigation Reform Act, 15 U.S.C. § 77z-1(b) (1995) ("PSLRA"). Both Deloitte & Touche LLP ("Deloitte & Touche") and eight of the Debtors' current officers and directors are defendants in that lawsuit,¹ which is premised on allegations of fraud in connection with the Debtors' 2005 restatement of certain transactions originally reported in their financial statements for 2003 and prior years (the "Restatement"). No party has admitted any wrongdoing or liability in connection with the Securities Litigation. The Lead Plaintiffs nevertheless argue that these allegations warrant a denial of the Application and have sought extensive discovery, which they claim is

¹ Lead Plaintiffs filed their Consolidated Amended Complaint (the "Complaint") in the Securities Litigation on September 30, 2005. It names as defendants, among others, Delphi, Deloitte & Touche, John D. Sheehan, Delphi's Chief Restructuring Officer, and seven of Delphi's current directors: Messrs. Brust, Bernardes, Opie, Colbert, Farr, Gottschalk, and Irimajiri.

necessary to help them prove these allegations, purportedly in connection with the Deloitte & Touche Application.

2. Contrary to the Lead Plaintiffs' arguments, the discovery and testimony sought does not relate to the "disinterestedness" of Deloitte & Touche. This requirement is amply shown in the Affidavit of Brock E. Plumb (the "Plumb Affidavit") filed with the Application and the Supplemental Declaration of Brock E. Plumb, attached hereto as Exhibit A (the "Supplemental Plumb Declaration"; together with the Plumb Affidavit, "Plumb Affidavits"). Tellingly, the official committee of unsecured creditors appointed in these cases has filed an objection to the Application that is limited to isolated issues, not to the Application as a whole, and no other individual creditor, shareholder, employee or other stakeholder has filed an objection to the Application. The Debtors have discussed the Application with the Office of the United States Trustee (the "U.S. Trustee") and, based on those discussions and certain additional information the Debtors have provided, believe that the U.S. Trustee, a party acting on behalf of the estates and their creditors, does not oppose the Application. Similarly, Lead Plaintiffs' argument that their objection and the discovery they seek go to Deloitte & Touche's competence is disingenuous. The Plumb Affidavits and the Declaration of Robert J. Dellinger (the "Dellinger Declaration"), attached hereto as Exhibit B, filed in support of the Application demonstrate that Deloitte & Touche is competent to perform an audit of the Debtors, that the retention of Deloitte & Touche is in the best interests of the Debtors' estates and that denial of the application will result in harm to the Debtors' estates. As described below, the Debtors have narrowed the relief they are seeking and will retain Deloitte & Touche only to perform the 2005 audit – a task that Deloitte & Touche has been working on all year.

3. The Lead Plaintiffs' theory – that they should be entitled to discover information relating to Deloitte & Touche's work for the Debtors over a number of years and to attempt to prove in this Court the allegations of their 257-page Complaint in order to test the competence of Deloitte & Touche to complete this year's audit – simply makes no sense. The Court should reject this thinly-veiled attempt to circumvent section 362 and the PSLRA. As demonstrated below, the pendency of the Securities Litigation and the Lead Plaintiffs' allegations are insufficient to defeat the retention of professionals selected by the Debtors. Moreover, extensive discovery with respect to such speculative assertions is unwarranted under section 327. A section 327 application may not be used in a backdoor attempt to obtain information in support of other litigation. This is particularly true in these cases, where efforts to obtain the information are stayed by two statutes.

4. As is demonstrated in the Dellinger Declaration and discussed below, the Debtors will suffer immediate and substantial harm if the Application is not granted, including increased costs and the inability to meet filing deadlines imposed by the Securities & Exchange Commission ("SEC") and debtor in possession financing covenants. Moreover, the purported risks asserted by the Lead Plaintiffs are substantially addressed by the short duration of the retention and the fact that the senior members of the audit team are entirely different from those involved prior to the Restatement. In view of all these circumstances, this Court should exercise its discretion to deny the Objection and grant the Application.

Argument

A. Deloitte & Touche Does Not Hold An Interest Adverse To The Estate And Is Disinterested

5. Despite the Lead Plaintiffs' attempt to obfuscate the legal standards governing the Application by focusing their Objection on irrelevant facts and unproven

allegations, the standard that the Debtors must meet – and have met – in order to retain Deloitte & Touche in these chapter 11 cases is clear: that Deloitte & Touche is a "disinterested person" as that term is defined in title 11 of the United States Code, 11 U.S.C. §101-1330, as amended (the "Bankruptcy Code"). Section 327 of the Bankruptcy Code allows a debtor in possession, with the court's approval, to employ professionals that do not "hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the debtor's duties." 11 U.S.C. §327(a).

6. Section 101(14) of the Bankruptcy Code defines a "disinterested person," in pertinent part, as one that:

(A) is not a creditor, an equity security holder, or an insider; . . .

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor . . . ; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor . . . or for any other reason.

11 U.S.C. §101(14).

7. Because the Bankruptcy Code does not define the term "interest adverse to the estate," courts determine the existence of an adverse interest on a case by case basis. *In re Caldor, Inc.*, 193 B.R. 165, 171 (Bankr. S.D.N.Y. 1996). The Second Circuit has held that to hold or represent an interest adverse to the estate means "(1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate." *In re AroChem Corp.*, 176 F.3d 610, 623 (2d Cir. 1999); *In re WorldCom, Inc.*, 311 B.R. 151, 163 (Bankr. S.D.N.Y. 2004). Courts in this district have made clear, however, that "interests are not

considered 'adverse' merely because it is possible to conceive a set of circumstances under which they might clash." *In re Leslie Fay Cos., Inc.*, 175 B.R. 525, 532 (Bankr. S.D.N.Y. 1994) (citing *TWI Int'l v. Vanguard Oil & Serv. Co.*, 162 B.R. 672, 675 (S.D.N.Y. 1994)).

8. Courts have construed the "disinterested person" and the "no interest adverse to the estate" requirements of section 327(a) of the Bankruptcy Code as a single test. *In re WorldCom*, 311 B.R. at 164 (noting that the "interest adverse to the estate" language in section 327(a) overlaps with the "materially adverse interest" standard under the definition of disinterested person to form a "single test to judge conflicts"); *In re Caldor*, 193 B.R. at 171 ("[b]ecause§101(14) and 327(a) overlap, the two prongs of§ 327(a) are satisfied when the professional to be retained is found to be a 'disinterested person'"); *In re Leslie Fay*, 175 B.R. at 532 (quoting *In re Martin*, 817 F.2d 175, 180 (1st Cir. 1987) to state that the "twin requirements of disinterestedness and lack of adversity telescope into a single hallmark"). In applying this test, courts generally look to the totality of the circumstances and exercise their discretion in determining whether a party is disinterested and does not hold or represent an interest adverse to the estate. *See, e.g., In re Caldor*, 193 B.R. at 172.

9. In this case, the Application and supporting Plumb Affidavit, as well as the Supplemental Plumb Declaration and the Dellinger Declaration filed with this Response, amply demonstrate that Deloitte & Touche is not an "interested" party under section 101(14) of the Bankruptcy Code, that it holds no interest adverse to the Debtors, and that the totality of the circumstances warrant this Court's exercise of its discretion to grant the Application.

a. Deloitte & Touche Is A Disinterested Person

10. Deloitte & Touche is a disinterested person as that term applies under each prong of section 101(14). First, Deloitte & Touche is a disinterested person pursuant to section 101(14)(A) of the Bankruptcy Code in that it is neither a creditor, an equity security holder, nor

an insider of the Debtors. Although Deloitte & Touche could otherwise assert a prepetition claim against the Debtors, Deloitte & Touche has agreed to waive that claim upon this Court's approval of the Application. The case cited by the Lead Plaintiffs, *In re Andover Togs*, 2001 WL 262605 (S.D.N.Y. 2001), is plainly distinguishable in that it concerns an accounting firm that *refused* to waive its prepetition claim. Because Deloitte & Touche has agreed to waive its prepetition claim upon approval of the Application, it would not be a creditor of the Debtors.

11. Second, Deloitte & Touche is a disinterested person pursuant to section 101(14)(D) of the Bankruptcy Code in that it is not, and was not within the two years prior to the petition date, a director, officer, or employee of the Debtors. The Lead Plaintiffs do not dispute this fact.

12. Third, Deloitte & Touche is a disinterested person under section 101(14)(E) of the Bankruptcy Code in that it does not hold an interest materially adverse to the interest of the estate or any class of creditors or equity holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors. The purported conflicts of interest alleged by the Lead Plaintiffs with respect to Deloitte & Touche are based not on facts, but on mere allegations in litigation brought by the Lead Plaintiffs. The case law in this district establishes that such allegations and speculation simply do not create a conflict or otherwise undermine Deloitte & Touche's status as a disinterested person under section 327(a) of the Bankruptcy Code.

13. As noted above, in determining whether a professional has an interest adverse to the debtor, it is not enough that it is "possible to conceive of a situation where interests might clash." *In re WorldCom*, 311 B.R. at 168 (citing *In re Leslie Fay*, 175 B.R. at 532). *See also In re Caldor*, 193 B.R. at 172 (quoting *In re Leslie Fay*, 175 B.R. at 532 to state

that "interests are not considered 'adverse' merely because it is possible to conceive a set of circumstances under which they might clash"); *TWI Int'l*, 162 B.R. at 675 (holding that hypothesizing the emergence of conflicts is not enough to merit the disqualification of a professional); *In re O.P.M. Leasing Servs., Inc.*, 16 B.R. 932, 939 (Bankr. S.D.N.Y. 1982) (adopting a "wait and see" approach to a potential conflict, asserting that acting in a preemptive manner would interrupt the efficient administration of the bankruptcy).

14. A recent case in this district is instructive. In *In re WorldCom*, KPMG, the debtors' auditors and tax advisors, devised for WorldCom prepetition a tax minimization strategy. Subsequent to WorldCom's chapter 11 filing, several states challenged the tax minimization strategy as illegitimate, giving rise to the possibility that the debtors would be liable to the states for additional taxes, interest, and penalties. The states also filed a motion in the bankruptcy court to disqualify KPMG as the debtors' auditors and tax advisors, arguing that the debtors' potential cause of action against KPMG arising out of the challenged strategy rendered KPMG a holder of an interest adverse to the estate. Judge Gonzalez rejected this argument and denied the motion, holding that "KPMG does *not* have an interest adverse to the interests of the estate or any class of creditors or equity holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors *simply because there is a speculative possibility that in the future, some events may render KPMG and the Debtors adverse.*" *In re WorldCom*, 311 B.R. at 168-69 (emphasis added).

15. The Lead Plaintiffs' Objection is founded on similar, if not identical, speculation and likewise should be overruled. The Lead Plaintiffs argue, for example, that Deloitte & Touche cannot be retained in these cases because the *potential* for cross-claims between Deloitte & Touche and the Debtors' officers and directors "preclude disinterestedness."

Objection at ¶44. However, as Judge Gonzalez made clear in *WorldCom*, such speculation regarding hypothetical future events is insufficient to render the professional "interested." *Id.* Contrary to the Lead Plaintiffs' assertions, the allegations of the Complaint with respect to Deloitte & Touche and the Debtors' officers and directors are unproven. As is clear from the Debtors' public filings, Delphi has not "admitted" these allegations, despite Lead Plaintiffs' false statement that there are "fraudulent accounting transactions and practices in which Delphi has admitted engaging." Objection at ¶6. Similarly, Deloitte & Touche has denied the allegations against it. These are allegations, nothing more, and do not form the basis for a finding of "interest" that would preclude Deloitte & Touche from completing the Debtors' 2005 audit.

16. The Lead Plaintiffs' other arguments regarding disinterestedness are all variations on the same theme and must fail for the same reason. Indeed, the Lead Plaintiffs' argument that the post-Restatement Deloitte & Touche team that will be completing the 2005 audit may have significant incentives to conceal Deloitte & Touche's purported fraudulent activities in prior years is premised on several layers of unproven allegations and baseless assumptions. In deciding whether a professional is eligible for retention under section 327, "horrible imaginings alone cannot be allowed to carry the day. Not every conceivable conflict must result in sending [the professional] away to lick his wounds." *In re Martin*, 817 F.2d at 183 (vacating and remanding a judgment based on the bankruptcy court's erroneous finding of adverse interest). As the case law makes clear, a finding of an adverse interest on the part of a professional chosen by the debtor requires much firmer grounding. The Objection, which is based solely on speculation, should be overruled.

17. The cases cited by the Lead Plaintiffs regarding material adverse interests do not support a contrary view. For example, *In re Angelika Films*, 246 B.R. 176 (S.D.N.Y. 2000),

concerned the disinterestedness of debtor's counsel after debtor's counsel filed a motion that placed the economic interest of another party over the interest of the debtor, causing a direct and tangible economic harm to the debtor's estate. Similarly, *In re Vebeliunas*, 231 B.R. 181 (Bankr. S.D.N.Y. 1999), concerned the disqualification of counsel to the chapter 7 trustee after counsel's unequivocal statements expressing prejudice against and negative opinions about the debtor. In this case, there is no evidence of any such actions by Deloitte & Touche against the Debtors' interests. These cases are simply inapposite.

18. Perhaps realizing the shaky legal ground on which their Objection rests, the Lead Plaintiffs attempt to bolster their argument by asserting that "[e]ven the appearance of conflict or impropriety must be avoided when retaining professionals in bankruptcy." Objection at ¶33. Not only is there no appearance of impropriety in this case, for the reasons discussed above, but also the cases cited by the Lead Plaintiffs make clear that mere speculation and hypothesis are insufficient to give rise to such a perception. For example, in *In re Martin*, 817 F.2d 175, a law firm that had taken a security interest in a piece of the debtor's property to safeguard the payment of its fees appealed from the bankruptcy court's order disqualifying the firm. The First Circuit held that this interest was not impermissible *per se*, and remanded the case to the bankruptcy court for reconsideration. *Id.* at 183. Contrary to the Lead Plaintiffs' argument, the case does not reverse the award of compensation to an interested attorney to avoid the appearance of conflict or impropriety. Rather, the case calls for the bankruptcy court to use its discretion in determining whether a conflict exists and to evaluate each case in its own context. Similarly, in *In the Matter of Codesco, Inc.*, 18 B.R. 997, 999 (Bankr. S.D.N.Y. 1982), the court approved a trustee's retention of a law firm that previously had represented the creditors' committee. Although the court stated in *dicta* that the disinterestedness requirement in

section 327 also operates to prevent the appearance of a conflict, its holding makes clear that a more concrete standard is being applied.

b. The Immediate And Real Harm To Debtors If The Application Is Denied Outweighs The Hypothetical Risks Argued By Lead Plaintiffs

19. The considerable harm the Debtors would suffer should Deloitte & Touche not be retained in these chapter 11 cases weighs strongly in favor of this Court's overruling the objection and granting the Application. When evaluating proposed retentions or disqualifications under section 327, bankruptcy courts must consider not only the protection of the interests of the bankruptcy estate and its creditors, but also "the efficient, expeditious, and economical resolution of the bankruptcy proceeding." *In re AroChem*, 176 F.3d at 621 (citation omitted). This consideration is accorded such weight that, in *In re Leslie Fay*, the bankruptcy court declined to disqualify counsel, even after finding that debtor's counsel had failed to disclose a material interest adverse to the estate, on the basis of the burden that would be placed on the debtor by "the great delay and cost occasioned by the departure of the counsel with whom it has worked so long [(20 months.)]" *Id.* at 538-39.

20. As set forth in the Dellinger Declaration, the denial of Deloitte & Touche's retention would delay publication of Delphi's 2005 financial statements until the second half of 2006, causing (i) many of Delphi's key constituencies to lose confidence in the Debtors and to reduce their business exposure to the Debtors, (ii) the Debtors' violation of a covenant in their debtor in possession financing facility, and (iii) the Debtors' non-compliance with SEC reporting requirements. Dellinger Declaration at ¶¶4, 7, 8. Denial of Deloitte & Touche's retention also would force Delphi's financial management team to divert to new auditors significant support and time that otherwise would be spent operating the business and formulating the Debtors' business plan for reorganization. *Id.* at ¶9. Although the Debtors have decided to change

auditors for 2006, which change will require a certain amount of management time and attention, this change will occur in the ordinary course of business at the start of the fiscal year and will not affect the timeliness of the Debtors' filings or require the concentrated efforts of management at year-end when the Debtors' financial statements are due. *Id.* at¶12. As Mr. Dellinger states in his Declaration, the audit process for the Debtors, like that of most large corporations, is an ongoing process throughout the year that involves a large number of personnel in several countries. *Id.* at¶3. Deloitte & Touche has been working on the 2005 audit all year, is familiar with the Debtors' worldwide operations, and has been paid substantial sums for the work performed thus far. *Id.* at¶4, 10. It would be impossible for a new auditor to begin now and finish the 2005 audit in a timely fashion. *Id.* at¶4. Moreover, such a change would be extremely costly given the amounts already paid to Deloitte & Touche. *Id.* at¶10. Realistically, the only time to undergo a successful auditor transition is at the beginning of the fiscal year. *Id.* at¶5.

21. Indeed, it might well be impossible for Delphi to identify another accounting firm that would be capable of performing a complex global audit and of meeting the independence requirements for 2005. *Id.* at¶6. The Debtors believe that only one of the "big four" accounting firms would have the global capabilities to audit a company the size and scope of Delphi, and therefore the only firms that could perform such an audit for 2005, should Deloitte & Touche not be retained, would be KPMG, E&Y, or PricewaterhouseCoopers. *Id.* All of these firms have performed various work for the Debtors during the course of 2005, which would make it unlikely that they could be retained under applicable regulations. *Id.* In order to meet their debtor in possession financing covenants, the Debtors must timely file an audit opinion from an independent audit firm. If Deloitte & Touche is not retained to perform the 2005 audit, the Debtors are highly unlikely to meet their SEC filing requirements and will be in violation of

their debtor in possession financing covenants. In this event, the Debtors may suffer a liquidity crisis and will not have access to cost-effective financing. *Id.* at ¶8. Thus, it is clear that a change at this time would be inefficient, slow and costly, if not outright disastrous to the Debtors given the risks associated with failing to meet SEC filing requirements. Any balance of interests thus weighs in favor of overruling the Objection.

22. Against this real and immediate harm to the Debtors absent Deloitte & Touche's retention, the Lead Plaintiffs' purported concerns about potential conflicts and the appearance of impropriety ring hollow. Moreover, any lingering concern regarding Deloitte & Touche's disinterestedness should be allayed by the brief duration of their proposed engagement. On December 7, 2005, Delphi's board of directors endorsed the recommendation of the audit committee to retain Ernst & Young LLP to audit Delphi's consolidated financial statements for 2006. *Id.* at ¶12. Deloitte & Touche's retention, therefore, would last only until the issuance of its audit report for the year ended December 31, 2005, an abbreviated retention period that renders unlikely the realization of any potential conflicts.

B. Lead Plaintiffs' Argument That Deloitte & Touche Is Not Competent To Serve As Independent Auditors And Accountants Is Disingenuous

23. The Debtors have amply shown that Deloitte & Touche is competent to serve as independent auditors and accountants to the Debtors in these chapter 11 cases. It is undisputed that Deloitte & Touche is a national professional services firm of qualified professionals properly certified to do the type of work contemplated by the Application. With more than 1,200 partners and principals and thousands of professional staff, Deloitte & Touche is a firm that has been in the past and will be in the future competent and qualified to perform auditing and accounting services. The Debtors, in the Application, and Deloitte & Touche, in the Plumb Affidavits, have demonstrated that Deloitte & Touche is competent and disinterested. In

addition, due to Deloitte & Touche's prior work with and knowledge of the Debtors, it would be economically efficient to continue to retain the accounting firm to perform the 2005 audit.

Dellinger Declaration at ¶10.

24. The Lead Plaintiffs do not dispute these facts, but rather purport to question Deloitte & Touche's competence based on unproven allegations in a pending lawsuit to which both are party. Even if those allegations were relevant here – which they are not – Deloitte & Touche has taken internal measures that ensure that there is no conflict or competency issue. Prior to the issuance of its audit report for the year ended December 31, 2004 and the re-issuance of its reports of restated financial statements as of December 31, 2003 and 2002, Deloitte & Touche replaced senior members of its Delphi audit team. Supplemental Plumb Declaration at ¶3. As a result, only two current members of the audit team were involved in the audit of past transactions included in the restatements, and neither of the two was involved in audit work regarding material transactions. *Id.* Accordingly, even if the unproven allegations of the Complaint were relevant to Deloitte & Touche's competence, the audit team is free from conflicts of interest and fully competent to continue in its capacity as independent auditors and accountants to the Debtors.

25. With respect to competence, the Lead Plaintiffs cite *In re Seeburg Prods. Corp.*, 215 B.R. 175 (Bankr. N.D. Ill. 1997), and *In re Doors and More Inc.*, 126 B.R. 43 (Bankr. E.D. Mich. 1991), two cases wholly inapplicable to the Deloitte & Touche retention. In both cases, an attorney whose undisputed conduct demonstrated gross negligence was denied retention. *In re Seeburg* concerned an attorney whose conduct was so incompetent that it "not only obstructed the judicial process, but also resulted in a sanction detrimental to his client." *Id.* at 179. In *In re Doors and More*, the attorney's lack of knowledge of bankruptcy law and his

failures resulting therefrom jeopardized the debtor's chances of success in its chapter 11 case.

Deloitte & Touche, which is recognized worldwide as competent to perform auditing work and has been retained in numerous chapter 11 cases, cannot be compared to the incompetent and unqualified attorneys in these cases.

C. The Objection Should Be Overruled Because It Is A Blatant Attempt By The Lead Plaintiffs To Gain Discovery Through Improper Means

26. The Lead Plaintiffs' transparent motive in pursuing the Objection is not to protect the estate and its creditors but rather to gain a tactical advantage in the Securities Litigation by obtaining discovery and testimony that otherwise is stayed both by the automatic stay under section 362 and by the PSLRA.

27. The context and timing of the Lead Plaintiffs' Objection, and their actions in pursuing discovery in these chapter 11 cases, demonstrate this improper motive. On November 15, 2005, the Lead Plaintiffs moved this Court for a modification of the automatic stay in these chapter 11 cases in order to obtain from Delphi documents relating to the Securities Litigation. As stated in detail in the Debtors' Objection To Lead Plaintiffs' Motion For Limited Modification Of Automatic Stay (the "Lift Stay Response"), filed on December 29, 2005, the Lead Plaintiffs sought a lifting of the stay in this Court before seeking such relief in the Securities Litigation in order to assist them in persuading the court in the Securities Litigation to lift the stay in effect in that action pursuant to the PSLRA. Lift Stay Response, ¶¶2-3, 13-17. On November 21, 2005, the Lead Plaintiffs agreed to adjourn that motion from November 29, 2005 until January 5, 2006, purportedly to discuss a consensual resolution with the Debtors. However, on November 23, 2005, the Lead Plaintiffs filed an objection to the Debtors' motion for authority to implement a key employee compensation program (the "KECP Objection") and, through that objection, attempted to obtain broad discovery far beyond the scope of the KECP Objection and

directly relating to the transactions and events underlying the Securities Litigation. Shortly thereafter, on December 2, 2005, the Lead Plaintiffs filed the Objection to the Application and again requested broad discovery relating to the Securities Litigation. As described in greater detail in the Lift Stay Response and the Debtors' objection to the Lead Plaintiffs' motion to compel deposition testimony and the production of documents, the Lead Plaintiffs' discovery requests go far beyond the scope of these matters. For example, it is difficult to determine how "[a]ll minutes of meetings of the Audit Committee from January 1, 1999 to date" or "[a]ll documents relied upon by the Company in reaching the conclusion expressed in the Company's Form 10-K . . . that "Delphi had not maintained effective internal controls over financial reporting at December 31, 2004" and "Delphi's disclosure controls and procedures were also ineffective," are narrowly tailored requests or go to the heart of retaining Deloitte for the year 2005 audit. *See* December 15, 2005 Letter from James G. Sabella to John Wm Butler, Jr., et al., ¶3(e), 3(c), attached hereto as Exhibit C. In any event, such requests are unduly burdensome. Nevertheless, the Debtors made Mr. Dellinger, the CFO of Delphi, available for deposition on December 20, 2005 regarding matters pertaining to the Application.

28. Despite their tortured attempts to link these requests to the matters pending before this Court, the Lead Plaintiffs' orchestrated motions and objections reveal a determination to obtain discovery and testimony relating to the Securities Litigation. This motive is particularly obvious with respect to the discovery sought in connection with the Application. In the Objection, the Lead Plaintiffs request the denial of the Application or, in the alternative, that no senior member of the audit team have had involvement in prepetition audits of the Debtors. Objection, p. 2. Subsequent to the filing of the Application, the Debtors made the business decision to replace Deloitte as their auditors on a going forward basis; thus, the relief sought in

the Application is now limited to Deloitte's retention for 2005. Moreover, as set forth in the Supplemental Plumb Declaration, and as Mr. Dellinger testified in his deposition, the senior members of the audit team are entirely different from those who were in place prior to the Restatement. Notwithstanding the narrow scope of the Application, as well as the information provided to the Lead Plaintiffs in Mr. Dellinger's deposition, which should address the Lead Plaintiffs' professed concerns, the Lead Plaintiffs have continued to press for broad discovery that has no legitimate relation to the Application. Although the Lead Plaintiffs argue that the requested discovery relates to past work of Deloitte & Touche and thus goes to that entity's disinterestedness or competence, this argument goes too far; if this type of discovery were permitted, the Lead Plaintiffs would be entitled to prove their entire litigation in this Court in order to support their arguments on the Application. This approach would undermine the protections of the automatic stay and is contrary to the law in this district regarding the proper scope of discovery on applications for the retention of professionals. *In re WorldCom, Inc.*, 311 B.R. at 171-72 (denying a party's discovery requests in connection with a disqualification motion where the requests were "extremely broad and primarily focused on" underlying litigation with the Debtors rather than on the disqualification motion). The Objection is a thinly veiled and improper attempt to obtain discovery to assist the Lead Plaintiffs in the Securities Litigation in circumvention of the automatic stay and the PSLRA.²

29. As the Second Circuit has consistently stated in the context of motions to disqualify professionals under section 327, attempts to deprive debtors of the professionals of their choosing must be viewed with some skepticism because "disqualification has an immediate

² The Lead Plaintiffs' statement in their motion to compel that they have signed a confidentiality agreement with the Debtors is irrelevant. Although the designation of information by the Debtors as confidential would prevent its direct use in the Securities Litigation, the disclosure of such facts at this time would obviously provide an advantage to Lead Plaintiffs in obtaining discovery – an advantage that is improper given the stays imposed by the PSLRA and section 362.

adverse effect on the client by separating him from counsel of his choice . . . , disqualification motions are often interposed for tactical reasons . . . , [a]nd even when made in the best of faith, such motions inevitably cause delay." *Armstrong v. McAlpin*, 625 F.2d 433, 444 (2d Cir. 1980), *vacated by* 449 U.S. 1106. *See also, Harker v. Comm'r of Internal Revenue*, 82 F.3d 806, 808 (8th Cir. 1996) ("Because of the potential for abuse by opposing counsel, 'disqualification motions should be subjected to 'particularly strict judicial scrutiny'"') (citing cases). Such disguised litigation tactics are clearly inappropriate, abusive of the Debtors, and disrespectful to this Court, and should not be suffered; the Objection should be overruled.

WHEREFORE, the Debtors respectfully request that this Court overrule the Objection and approve the Application.

Dated: New York, New York
January 3, 2006

SHEARMAN & STERLING LLP

By: /s/ Andrew V. Tenzer
Douglas P. Bartner (DB-2301)
William J.F. Roll, III (WR-8996)
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Special Counsel for Delphi Corporation, et al.,
Debtors and Debtors in Possession

EXHIBIT A

SUPPLEMENTAL PLUMB DECLARATION

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK	
	X
In re: DELPHI CORP., et. al., Debtors.	 Chapter 11 Case No. 05-44481 (RDD) Jointly Administered
	X

**SUPPLEMENTAL DECLARATION OF BROCK E. PLUMB IN SUPPORT
OF APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 327(a), 328 (a) AND
1107(b) AUTHORIZING EMPLOYMENT AND RETENTION OF DELOITTE &
TOUCHE LLP AS INDEPENDENT AUDITORS AND ACCOUNTANTS TO
DEBTORS EFFECTIVE NUNC PRO TUNC TO OCTOBER 8, 2005**

**Brock E. Plumb, states under penalty of perjury that the foregoing is
true and correct:**

1. I am a partner in the firm of Deloitte & Touche LLP ("Deloitte & Touche"), which has an office located at 600 Renaissance Center, Suite 900, Detroit, Michigan 48243-1895. I submit this Supplemental Declaration (the "Supplemental Declaration") based upon inquiries made by me or on my behalf in support of the Application for Order Under 11 U.S.C. §§327(a), 328 (a) and 1107(b) Authorizing Employment and Retention of Deloitte & Touche LLP as Independent Auditors and Accountants To Debtors, effective nunc pro tunc to October 8, 2005 (the "Retention Application"). This Supplemental Declaration provides additional clarification and information with respect to matters set forth in my Affidavit dated November 9, 2005 and submitted in support of the Retention Application (the "Plumb

Affidavit"). Capitalized terms used herein are as defined in the Retention Application unless otherwise specified.

2. Paragraph 6(g) of the Plumb Affidavit described certain litigation against Deloitte & Touche. As noted therein, Deloitte & Touche has been named as a defendant in three private lawsuits related to Delphi Corporation ("Delphi"). The three suits are: (1) a consolidated securities class action pending in the United States District Court for the Southern District of New York, (2) a putative class action that has been consolidated into a larger ERISA action in the United States District Court for the Eastern District of Michigan, and (3) a shareholder's derivative suit that is pending in Michigan state court. Deloitte & Touche considers these lawsuits to be without merit and denies the material allegations.

- (a) The Consolidated Securities Litigation: In re Delphi Corp. Sec. Litig., No. 05-CV-2637 (NRB) (S.D.N.Y.)

On September 30, 2005, plaintiffs filed a Consolidated Amended Class Action Complaint asserting Rule 10-b(5), Section 11, Section 12, Section 15 and Section 20 claims under the federal securities laws against 37 defendants. In their complaint, plaintiffs allege that Delphi (1) improperly accounted for inventory transactions as sales even though they were actually financing transactions, (2) improperly accounted for more than \$260 million in transactions with General Motors Corporation ("GM") by improperly classifying and recording a \$202 million payment to GM as an adjustment to Delphi post-retirement benefit as opposed to a warranty adjustment, (3) prematurely recognized warranty credits that it received from GM in 2001, (4) failed to recognize a \$10 million warranty obligation to GM in the first quarter of 2003, (5) improperly accounted for \$110 million in transactions with suppliers by improperly recognizing

rebates and credits, (6) failed to accrue for obligations and recorded adjustments in the wrong periods, (7) did not accurately disclose the extent of its use of European credit facilities for financing, and (8) understated its inventory balances, and inflated its reported income, by failing to establish appropriate environmental reserves.

With respect to Deloitte & Touche, plaintiffs assert that the firm's opinions on Delphi's financial statements for fiscal years 1999 through 2003, as incorporated in the Form 10-K that Delphi filed annually with the SEC, "falsely stated that [Deloitte & Touche] had conducted its audits in accordance with GAAS and that, in [Deloitte & Touche's] opinion, Delphi's financial statements were prepared in accordance with GAAP," that Deloitte & Touche either knowingly or recklessly disregarded the alleged "fraudulent scheme" perpetrated by Delphi and supported by other defendants, ignored material internal control deficiencies and "red flags" at Delphi, failed to comply with professional standards, and "disregarded facts that indicated it had failed to obtain sufficient competent evidential matter to afford a reasonable basis for expressing unqualified opinions on Delphi's financial statements." Deloitte & Touche intends to file a motion to dismiss plaintiffs' complaint as to it.

(b) The ERISA Litigation: Folck v. Delphi Corp., No. 05-CV-71200 (E.D. Mich.)

On March 28, 2005, a complaint was filed, purportedly on behalf of five Delphi employee benefit plans that invested in the Delphi Common Stock Fund (the "Fund"), as well as the individual Delphi employees who participated in those plans. The employee benefit plans and the Fund were registered with the SEC pursuant to registration statements on Form S-8 filed with the SEC. The suit is one of fifteen actions

consolidated as In re Delphi ERISA Litigation, No. 05-CV-70882, by Judge Borman in the Eastern District of Michigan. None of the other consolidated actions names Deloitte & Touche as a defendant and Deloitte & Touche is named in the above-referenced action only in a securities law count, not in any ERISA claim.

As to Deloitte & Touche, plaintiffs allege that (1) defendants, including Deloitte & Touche, signed the registration statements on Form S-8, that those registration statements expressly incorporated Delphi's future Exchange Act filings (including reports on Forms 10-K, 10-Q, and 8-K), and that those filings contained material misrepresentations and omissions, and (2) Delphi's financial results were misstated because of improper accounting for transactions involving rebates, credits, or other payments from suppliers, and off-balance-sheet financing of certain indirect materials and inventory. The Complaint does not specifically allege how Deloitte & Touche purportedly participated in the allegedly improper accounting.

On June 18, 2005, during a status conference in the various ERISA actions consolidated before Judge Borman, lead counsel for the plaintiffs stated that when a consolidated ERISA complaint is filed, no Section 11 Securities Act claim would be included and the consolidated complaint would not include claims for violations of the securities laws. Those claims excluded are the claims in which Deloitte & Touche was named.

(c) The State Court Derivative Action: Weilheimer v. Battenberg, No. 2005 068931 CK (Oakland County (Mich.) Cir. Ct.)

On September 2, 2005, the above suit was filed as a shareholder derivative action on behalf of Delphi. Deloitte & Touche is named as a defendant in the text of the

complaint, but it is not named as a defendant in either the caption or the summons.

Deloitte & Touche has not been served with a copy of the summons or complaint. The Weilheimer complaint alleges (1) that Deloitte & Touche and the individual defendants failed to maintain adequate accounting controls, employed improper accounting and auditing practices and procedures, and allowed Delphi to issue misleading press releases and public filings, with the result that Delphi has been sued, lost market share, and suffered damage to its reputation, (2) that Delphi might be liable to other persons “by virtue of the same facts and circumstances as are alleged herein to give rise to defendants’ liability to Delphi,” with such liability arising “in whole or in part, from the knowing, reckless, disloyal and/or bad faith acts or omissions of defendants,” and (3) that the defendants caused materially false and misleading statements to be included in the proxy materials Delphi sent to shareholders by misrepresenting or omitting Delphi’s true financial results and business prospects.

On October 27, 2005, this Court entered an administrative order closing the case, without prejudice, because of the commencement of Delphi’s bankruptcy case.

3. Paragraph 6(b) of the Plumb Affidavit provides information concerning the Deloitte & Touche personnel anticipated to provide post-petition audit services to the Debtors (the “Delphi Engagement Team”). That information is supplemented as follows: Prior to the completion of the restatement of the financial statements of Delphi on June 30, 2005 (the “Restatement”), all of those audit partners and members of the senior audit staff of Deloitte & Touche who had worked on the audit or review of the material accounting entries that were being considered for restatement had rotated off of the

Delphi Engagement Team. As a result, during the process of the Restatement, I became the new lead client service partner and lead audit partner and Robert Steiner assumed the role of concurring partner. Two partners on the audit team who participated in the process of the Restatement, Jeff Aughton and Mark Crowley, remained from the prior audit team. They were not previously involved in the audit work on the material transactions at issue in the Restatement.

4. Paragraph 6(b) of the Plumb Affidavit provides disclosure regarding Deloitte & Touche's connections to GM. That information is supplemented as follows: GM is a long-standing client of Deloitte & Touche and its affiliates. A predecessor to Deloitte & Touche began providing services to GM prior to World War II. Currently, Deloitte & Touche and/or its affiliates provide (i) audit and audit-related services, (ii) tax compliance, tax planning and tax advice services (including preparation of tax returns, assistance with tax audits and appeals, and tax advice related to mergers and acquisitions) and (iii) services related to project management, process improvements and assistance with information technology systems projects not associated with financial statements. With respect to Deloitte & Touche's last fiscal year, the revenues from these services represent less than 1% of the combined net revenues of Deloitte & Touche and its affiliates. Similarly, with respect to Deloitte & Touche's last fiscal year, the revenues from the services provided to the Debtors by Deloitte & Touche and its affiliates represent less than 1% of the combined net revenues of Deloitte & Touche and its affiliates.

Dated: December <u>29</u> , 2005	By: <u>Brock E. Plumb</u> Brock E. Plumb
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EXHIBIT B

DELLINGER DECLARATION

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

DELPHI CORP., et al.,

Debtors.

[illegible]

Chapter 11
Case No. 05-44481 (RDD)
Jointly Administered

DECLARATION OF ROBERT DELLINGER IN SUPPORT OF APPLICATION FOR
ORDER UNDER 11 U.S.C. §§ 327(a), 328(a), AND 1107(b) AUTHORIZING EMPLOYMENT
AND RETENTION OF DELOITTE & TOUCHE LLP AS INDEPENDENT AUDITORS AND
ACCOUNTANTS TO DEBTORS, EFFECTIVE *NUNC PRO TUNC* TO OCTOBER 8, 2005

Robert Dellinger hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Chief Financial Officer of Delphi Corporation ("Delphi," and together with certain of its subsidiaries and affiliates, debtors and debtors in possession in the above-captioned cases, the "Debtors"), which has an office located at 5725 Delphi Drive, Troy, Michigan. I submit this declaration (this "Declaration") based upon inquiries made by me or on my behalf in support of the Application For Order Under 11 U.S.C. §§ 327(a), 328(a) And § 1107(b) Authorizing Employment And Retention Of Deloitte & Touche LLP As Independent Auditors And Accountants To Debtors, Effective *Nunc Pro Tunc* To October 8, 2005 (the "Retention Application"). The Debtors seek to retain and employ Deloitte & Touche as their independent auditors and accountants so that Deloitte & Touche can continue to provide auditing and accounting services as described herein and consistent with the terms and conditions of the engagement letters attached as Exhibits A and B to the Retention Application and incorporated herein by reference. Except as otherwise indicated, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.

2. To my knowledge based on reasonable inquiry, the Debtors would suffer significant negative ramifications should the retention of Deloitte & Touche not be allowed in these chapter 11 cases.

Significant Time Delays

3. If the Debtors are not permitted to retain Deloitte & Touche to complete their 2005 audit, there would be considerable time delays in publishing Delphi's 2005 financial statements, which in turn would cause significant problems for Delphi's business operations. Delphi would be obliged to retain another independent auditor to audit the company's 2005 consolidated financial statements. Although I believe that Delphi would be able to identify another independent auditing firm willing to perform Delphi's audit, there is uncertainty as to when such an audit could be performed and how long it would take. Delphi is a global business enterprise with 2004 revenues of approximately \$28 billion, operating in every major industrialized country in the world. As a result, Deloitte & Touche conducts its global auditing of Delphi on a continuous, year-round basis, involving a large number of personnel in several countries. If the Debtors were forced to suspend this ongoing audit and hire a new auditor to begin a 2005 audit, I do not believe any assurances would be given by the new auditing firm as to when they would be able to complete a 2005 audit.

4. A large international corporation like Delphi normally would change auditors at or near the beginning of its fiscal year. Specifically, the timing on an auditor transition is typically in the first quarter, and it is very difficult, if not impossible, to change audit firms late in the year. To bring in a new audit firm in December would result in the firm operating under an extremely compressed time period in which it would be impossible to complete an audit within the time frame required for Securities & Exchange Commission ("SEC") reporting. An

audit firm starts its work in the first quarter and continues through the second, third, and fourth, with a large focus on the year-end audit. In respect of Deloitte & Touche specifically, the firm has been working with Delphi for 10-11 months, and all of that time and effort is part of the 2005 audit.

5. Because it is the end of 2005, I believe it would take another auditing firm months to understand the scope and nature of Delphi's global operations and then months thereafter to conduct detailed audit testing. An attempt to bring another firm up to speed in this way would take at least six months and would be extremely disruptive. Afterwards, the auditing firm would then need time to consolidate the results of its global audit work and reach a conclusion as to Delphi's consolidated financial statements. Realistically, the only time to undergo a successful auditor transition is at the beginning of the fiscal year.

6. In addition, it would be particularly difficult in Delphi's case to clear the independence requirements with any of the other large accounting firms because Delphi has used those firms to do other things such as tax work. The Debtors believe that only one of the "big four" accounting firms would have the global capabilities to audit a company the size and scope of Delphi; therefore, the three possible candidates would be KPMG, E&Y, or PricewaterhouseCoopers. Each of these firms has performed work for Delphi during 2005 and would likely not be qualified as independent auditors for that year under applicable regulations.

7. Accordingly, I believe that if forced to hire new auditors, Delphi would not be in a position to publish audited 2005 consolidated financial statements before the second half of 2006. A lack of audited financial statements would cause many of the company's key constituencies, including banks, customers, suppliers, labor unions, and state and local

governments to lose confidence in the Debtors and take actions to reduce their business exposure to the Debtors.

8. Furthermore, Delphi is required under the rules and regulations of the SEC to file audited financial statements within 75 days after the end of its fiscal year, subject to an extension of 15 days upon application to the SEC. Delphi's debtor in possession financing facility approved by this Court, the 5-Year Third Amended and Restated Credit Agreement among Delphi Corporation, as Borrower, the Several Lenders from Time to Time Parties Thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent (the "DIP Facility"), requires that Delphi deliver audited financial statements to the administrative agent no later than the 90-day period allowed by the SEC.¹ Without Deloitte & Touche to complete the 2005 audit, I do not believe that Delphi would be able to comply with this requirement. As a result, the Debtors would be in violation of the terms of their debtor in possession financing and may face a liquidity crisis. This situation would be disastrous for Delphi as it would, among other things, lose its access to cost-efficient financing.

Diversion of Management Attention Away From Business and Reorganization

9. Another consequence of not retaining Deloitte & Touche and having to hire new auditors is that those new auditors would not be familiar with the business of the company, the financial processes, the internal controls, or the individuals responsible for recording transactions. Thus, the Delphi financial management team would be obligated to divert significant support and time to new auditors that otherwise would be spent operating the business and formulating a business plan for the reorganization of the Debtors.

¹ Section 6.1(a) of the DIP Facility provides that Delphi must deliver audited financial statements to the administrative agent within 110 days after the end of its fiscal year or such shorter term as required by the SEC.

Significant Additional Cost

10. Engaging an auditor other than Deloitte & Touche would result in Delphi incurring millions of dollars of additional cost. Prepetition, Delphi has already paid Deloitte & Touche a significant portion of the 2005 audit fee. Delphi need only pay to Deloitte & Touche the incremental costs and expenses associated with finishing the 2005 audit (i.e., October 2005 through completion). The cost of retaining new auditors would involve essentially paying those amounts already paid to Deloitte & Touche a second time, in addition to the incremental cost to complete the 2005 audit. Roughly \$15 to \$20 million is budgeted to be paid to Deloitte & Touche for the 2005 audit, with two-thirds or three-quarters of that amount having already been paid prepetition. Accordingly, it would be exorbitantly expensive to have to pay a new accounting and auditing firm to do the work already done by Deloitte & Touche and already paid for by Delphi. Due to Deloitte & Touche's prior work with and knowledge of the Debtors, it would be economically efficient to continue to retain the accounting firm to perform the 2005 audit.

Internal Changes at Deloitte & Touche Remove Risk

11. Prior to the issuance of its audit report for the year ended December 31, 2004 and the re-issuance of its reports of restated financial statements as of December 31, 2003 and 2002, Deloitte & Touche replaced senior members of its audit team. These personnel changes are discussed in more detail in the Supplemental Affidavit of Brock E. Plumb. As a result, I believe that no current members of the audit team were involved in the audit of those past transactions which were included within the scope of the audit committee's investigation and Delphi's restatement of its financial statements.

2006 Audit

12. Finally, on December 7, 2005, after reviewing proposals from four accounting firms, including Deloitte & Touche, the audit committee of the Delphi Board of Directors selected Ernst & Young LLP to serve as independent public accountants, effective January 1, 2006, for the fiscal year ended December 31, 2006. The Board of Directors concurred with the audit committee's selection. This change, while it will require a certain amount of management time and attention, will occur in the ordinary course of business at the start of the fiscal year. Accordingly, it will not affect the timeliness of the Debtors' filings or require the concentrated efforts of management at year-end when the Debtors' financial statements are due. Thus, the Debtors seek to retain Deloitte & Touche to finish their audit of the fiscal year ended December 31, 2005 and not beyond.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Troy, Michigan
January 3, 2005

By: /s/ Robert J. Dellinger
Robert J. Dellinger

EXHIBIT C

SABELLA LETTER



Grant & Eisenhofer P.A.

Jay W. Eisenhofer
Stuart M. Grant
Megan D. McIntyre
Geoffrey C. Jarvis
Sidney S. Lieberman
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December 15, 2005

Via Facsimile Transmission
and First Class Mail

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**Re: Discovery Request Relating to Lead Plaintiffs' Objection to Debtors'
Application for Order Under 11 U.S.C. §§ 327(A), 328(A) And 1107(B)
Authorizing Employment And Retention, Nunc Pro Tunc to October 8, 2005, of
Deloitte & Touche LLP As Independent Auditors and Accountants To Debtors
("Lead Plaintiff's Deloitte Objection")**

Dear Counsel:

We represent the Teachers' Retirement System of Oklahoma, the Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H. and Stichting Pensioenfonds ABP (collectively, "Lead Plaintiffs"), the Court appointed Lead

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Plaintiffs in the consolidated securities class action entitled *In re Delphi Corp. Securities Litigation*, Master File No. 1:05-CV-2637 (NRB)(SDNY).

This confirms your agreement to make Robert J. Dellinger available for deposition on Tuesday, December 20, 2005 from 1pm to 5pm at the offices of Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York in connection with the Objection.¹ In anticipation of Mr. Dellinger's deposition and in connection with the Objection, we request that you produce the following documents and answer the following interrogatories by no later than noon on Monday, December 19, 2005:²

1. Please identify each witness that you intend to call at the hearing in support of the Deloitte Application and a summary of each such witness's expected testimony;
2. Please identify the following persons:
 - (a) Deloitte professional personnel who worked on Deloitte's pre-petition Delphi engagements;
 - (b) Deloitte professional personnel who it is anticipated will work on Deloitte's engagements for the Debtor;
3. Please produce the following documents:
 - (a) All documents relied on by Delphi's Audit Committee in reaching its conclusions, as reported in the Form 8-K filed with the SEC on or about March 4, 2005 ("March 4, 2005 8-K") that the Company "did not have effective controls related to the administration and accounting for contracts" and that it "does not have adequate controls to identify and analyze the terms and conditions, both written and unwritten, of new contracts;"
 - (b) All documents relied on by the Company in reaching its conclusion, as reported in the March 4, 2005 Form 8-K that "the audited financial statements

¹ The term "Objection" means Lead Plaintiffs' Objection to Debtors' Application for Order Under 11 U.S.C. §§ 327(A), 328(A) And 1107(B) Authorizing Employment And Retention, Nunc Pro Tunc to October 8, 2005, of Deloitte & Touche LLP As Independent Auditors and Accountants To Debtors.

² For purposes of Debtors' response to this letter, the Uniform Definitions in Discovery Requests set forth in Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern District of New York, incorporated by reference in Rule 7026-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of New York (the "Local Rules") shall apply to this request for information and documents. Further, the requirements of Rules 7033-1 and 7034-1 of the Local Rules are incorporated herein. The term "Delphi" or the "Company" shall refer to Delphi Corporation. The term "Deloitte" shall refer to Deloitte & Touche LLP. Reference to the "Deloitte Application" means the Application for an Order Under 11 U.S.C. §§ 327(A), 328(A) And 1107(B) Authorizing Employment And Retention, Nunc Pro Tunc to October 8, 2005, of Deloitte & Touche LLP As Independent Auditors and Accountants To Debtors.

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and related independent auditors' reports for 2001 and subsequent periods . . . should no longer be relied upon and a restatement will be required;"

- (c) All documents relied upon by the Company in reaching the conclusion expressed in the Company's Form 10-K for the year ended December 31, 2004, filed with the SEC on June 30, 2005 (the "Restatement"), that "Delphi had not maintained effective internal controls over financial reporting at December 31, 2004" and "Delphi's disclosure controls and procedures were also ineffective;"
- (d) All memoranda on internal controls, management letters and similar documents submitted by Deloitte to the Company or its Audit Committee from January 1, 1999 to date;
- (e) All minutes of meetings of the Audit Committee from January 1, 1999 to date;
- (f) All memoranda and reports submitted by Deloitte to the Audit Committee from January 1, 1999 to date;
- (g) All memoranda and reports submitted by Deloitte to the Company relating to problems encountered during any of Deloitte's audits of the Company's financial statements;
- (h) All documents relied on by the Company in preparing the Restatement including all documents supporting the following statements set forth in the Restatement:
 - i. Delphi did not recognize certain liabilities or appropriately defer recognition of payments and credits that were received in conjunction with agreements for future information technology services. In addition, the investigation identified other rebate transactions occurring between 1999 and 2004 in which the payments and credits received by Delphi from suppliers were tied to agreements for the provision of future services or products, and for which Delphi recognized the payment or credit when received rather than as the services were performed or products were purchased. In addition, in certain of these transactions, credits were accrued without sufficient certainty of the collectibility of the amount recorded. The impact of these adjustments on originally reported retained earnings at December 31, 2001 and on 2002 and 2003 pre-tax income is \$(86) million, \$15 million and \$8 million, respectively;
 - ii. Delphi improperly deferred recognition of approximately \$22 million of payments made for system implementation services in 2002. These payments should have been recorded as expense when services were rendered, rather than deferred and recorded as an expense in later periods;

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- iii. In 1999 and 2000, Delphi improperly recorded asset dispositions, in a series of transactions, amounting to approximately \$145 million of indirect materials to an indirect material management company. Delphi recorded pre-tax income of approximately \$60 million in 1999 and an additional \$16 million in 2000 from the transactions. The transactions should not have been accounted for as asset dispositions but rather as financing transactions, principally because Delphi had an obligation to repurchase such materials. The gain recognized at the time of sale and subsequent expense recognized in periods when materials were repurchased has been eliminated. The pre-tax operating income effect primarily reflects earlier recognition of valuation allowances related to this material resulting in a decrease in retained earnings at December 31, 2001 of \$50 million and a reduction of \$45 million in the pre-tax loss for 2003. The cash flow effect of accounting for these transactions as financings is to reclassify approximately \$138 million and \$33 million of cash flow from operations to cash flow from financing activities in 1999 and 2000, respectively. In 2002 and 2003, Delphi repurchased certain indirect materials from the indirect material management company, recording a portion of the material repurchased as assets and writing-off the remainder;
- iv. In 2000 and 2001, Delphi entered into several transactions, in each case improperly recording the transaction as a disposal of inventory to a third party and repurchasing the same inventories in subsequent periods. Each of these transactions should have been accounted for as a financing transaction, not a disposal. Specifically, in the fourth quarter of 2000, Delphi entered into transactions, one for approximately \$70 million, a second to a different third party for approximately \$200 million, and a third, also with a different third party, for approximately \$7 million. In the first transaction, Delphi recorded a disposal of inventory at book value; in the second, which involved precious metals, Delphi recorded a disposal of inventory at a gain of approximately \$6 million, and in the third, Delphi recorded a disposal of inventory at a gain of approximately \$1 million. In the first and fourth quarters of 2001, Delphi disposed of \$10 million and \$9 million, respectively of inventory at book value. Recording the fourth quarter transactions as inventory disposals resulted in the recognition of LIFO inventory gains that increased pre-tax income for the year ended December 31, 2000 by approximately \$100 million. Finally, in the case of the \$70 million transaction in 2000 and each of the transactions in 2001, Delphi recorded an account receivable for the purchase price, and then allowed the third party to settle the account receivable using cash received through financing arranged by Delphi. As a result, Delphi received no increased cash flow in the quarter the inventory was sold. Because Delphi changed its accounting for inventories from the LIFO method to the first-in-first-out method

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(FIFO) in 2003, and generally accepted accounting principles required the restatement of its historical financial statements to give retroactive effect to the accounting change, the transactions' impact on LIFO reserves had been previously eliminated. Accordingly, the impact of these transactions on originally reported pre-tax income was to reduce 2000 pre-tax income by approximately \$7 million and increase 2001 pre-tax income by approximately \$6 million. The cash flow statement impact on originally reported results is to reclassify approximately \$200 million included in 2000 cash flow from operations to cash provided by financing activities and to conversely increase 2001 cash flow from operations and cash used for financing activities each by approximately \$200 million;

- v. Delphi improperly accounted for \$202 million in cash payments made to its former parent in calendar year 2000 as a pension settlement agreement. The payment should have been accounted for as a settlement of warranty claims and should have been expensed or charged against the warranty accrual in 2000 rather than reflected as an adjustment to post retirement obligations and amortized over future periods. Furthermore, with respect to \$85 million in credits received in 2001 from its former parent, Delphi determined that \$30 million of such credits were improperly recorded as a reduction to expense in 2001 and 2002. The credits should have been recognized as a reduction to warranty obligations when utilized. The net effect of these changes is to reduce 2001 pre-tax income by \$30 million, reduce 2002 pre-tax income by \$20 million and increase 2003 pre-tax income by \$20 million. In addition, in conjunction with a separate agreement, Delphi should have recognized a \$10 million warranty obligation to its former parent in the first quarter of 2003. This adjustment has the effect of reducing 2003 pre-tax earnings by \$10 million. The income impact of the warranty settlement adjustments is partially offset by the reversal of a portion of pension expense being recognized in conjunction with the original accounting treatment, \$7 million, \$0 and \$18 million in 2001, 2002 and 2003 respectively;
- vi. Delphi identified obligations that were not properly accrued for at the end of an accounting period. Delphi also identified other accounting adjustments that were not recorded in the proper period. These out of period adjustments were not material to the financial statements as originally reported; however, as part of the restatement, are being recognized in the period in which the underlying transaction occurred. The impact of these adjustments on originally reported pre-tax income for 2002 and 2003 is \$(14) million and \$(34) million, respectively;

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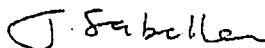
- (i) All documents supporting any additional adjustments to the financial statements that were included in the Restatement, not specifically identified in question 2(i) above;
- (j) All internal accounting papers reviewed by or provided to Deloitte relating to the transactions that are the subject of the Restatement;
- (k) All documents evidencing any compensation paid to Deloitte or affiliate of Deloitte, including Deloitte FAS, Deloitte Consulting, or Deloitte Tax, for fiscal year ended December 31, 2004 for audit and/or non-audit related services;
- (l) All engagement letters relating to the retention of Deloitte or affiliates of Deloitte, including Deloitte FAS, Deloitte Consulting, or Deloitte Tax, for audit or non-audit related services;
- (m) Any and all documents evidencing Deloitte's consideration during the period covered by the Restatement of the following "red flags" of potential accounting misfeasance:
 - i. Management compensation incentives specifically tied to the Company's financial metrics and huge annual bonuses for achieving these measures of success;
 - ii. Delphi's adoption of an "aggressive inventory management" program in 2000 and other cost-cutting initiatives;
 - iii. Delphi's management's display and/or communication of an appropriate attitude regarding internal controls and the financial reporting process;
 - iv. The competency and/or qualifications of Delphi's accounting, information technology, or internal auditing staff;
 - v. Large transactions not in the ordinary course of business, such as Delphi's inventory and asset disposal transactions with Setech, BBK and Bank One;
 - vi. Delphi's accounting for transactions with GM, including the accounting for pension benefits and warranty obligations;
- (n) All documents concerning Deloitte's retention to design and implement SAP or any other financial information system in 1999 and 2000;
- (o) All documents reflecting Deloitte's review of the Company's financial reporting systems in connection with its development and/or design of a financial reporting system for the Company in 1999 and 2000;

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- (p) All documents constituting the Company's assessment of Deloitte's performance of its audit and/or non-audit related services pre-petition including all communications by the Audit Committee to management concerning any assessment of Deloitte's performance;
 - (q) All documents relating to any inquiry or investigation conducted by the Company into the transactions that were restated in the Restatement;
 - (r) All documents constituting communications between the Company and Deloitte relating to the Restatement;
 - (s) All documents reflecting any measures taken by Deloitte to modify its audit plan in response to the Restatement; and
 - (t) All documents evidencing any discussions between Deloitte and the Company prior to and following the filing of the Company's Chapter 11 petition, relating to the retention of Deloitte for any post-petition services.
- 4. All documents relating to the Company's decision not to engage Deloitte for the audit of the Company's financial statements for the year ending December 31, 2006;
 - 5. All documents relating to the Company's decision to hire Ernst & Young LLP as its outside auditor for year ending December 31, 2006.

In addition, as you agreed in today's meet and confer in connection with the Objection, we look forward to your informing us on Monday whether you have authority to accept trial subpoenas for the members of Delphi's audit committee, including the following individuals: Robert H. Brust, Oscar De Paula Bernardes Neto, Cynthia A. Niekamp, John D. Opie, and Thomas H. Wyman.

Sincerely,



James. G. Sabella

cc: Michael Etkin, Esq. (Via Facsimile)
Brad Beckworth, Esq. (Via Facsimile)
Michael Yarnoff, Esq. (Via Facsimile)
John P. Coffey, Esq. (Via Facsimile)

EXHIBIT K

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Bernstein Litowitz Berger & Grossmann LLP	John P Coffey	220 St Paul St		Westfield	NJ	7090
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Grant Eisenhower PA	Stuart Grant	1201 N Market St	Suite 2100	Wilmington	DE	19801
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Schiffrin & Barroway LLP	Michael Yarnoff	280 King of Prussia Road		Radnor	PA	19087
Grant Eisenhower PA	Geoffry C Jarvis	1201 N Market St	Suite 2100	Wilmington	DE	19801
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